

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMIE MICHEL COKES, FF-4442,)
Petitioner,)
v.) Civil Action No. 09-393
COMMONWEALTH OF PENNSYLVANIA,)
et al.,)
Respondents.)

Mitchell: M.J.

MEMORANDUM AND ORDER

Jamie Michel Cokes has presented a petition for a writ of habeas corpus for which he has paid the filing fee and been granted leave to proceed further in forma pauperis. For the reasons set forth below, the petition will be transferred to the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. § 1631 and the Clerk will be directed to administratively close this case.

Cokes is presently incarcerated at the State Correctional Institution-Waymart serving a five to ten year sentence imposed following his conviction, by a jury, of voluntary manslaughter at No. CC20009603 in the Court of Common Pleas of Allegheny County, Pennsylvania. This sentence was imposed on November 13, 2002. An appeal was taken to the Superior Court which affirmed the judgment of sentence on April 23, 2004, and leave to appeal to the Pennsylvania Supreme Court was denied.

The instant petition was executed on March 30, 2009. However, this is not the first federal challenge that the petitioner has direct at this conviction. Cokes filed a federal habeas

corpus petition in this Court at C.A. 07-1513 challenging the same conviction he seeks to challenge here and raising the same issues. In a Report and Recommendation filed on January 15, 2008, and adopted by the Court on February 11, 2008 the latter petition was dismissed for procedurally defaulting the available state court remedies. He filed a second habeas petition on January 8, 2008 which was docketed at CA 08-77. That petition was transferred to the Court of Appeals as a second petition and the latter Court on May 15, 2008 at CA 08-1539, denied leave to file a second petition. The petitioner has now submitted a third habeas corpus petition.

In support of the present petition, Cokes contends he is entitled to relief on the following grounds:

1. Denial of access to legal materials during his incarceration between September 2006 and June 2007.
2. The introduction into evidence at trial of a weapon seized from his home which was not the murder weapon.
3. Ineffective assistance of trial counsel.¹

The Antiterrorism and Effective Death Penalty Act, signed into law on April 24, 1996, included several major reforms to the federal habeas corpus laws. As part of this habeas corpus reform, Congress amended 28 U.S.C. § 2244 to prohibit district courts from entertaining claims presented in a second or successive habeas corpus application unless the appropriate federal court of appeals authorizes such filing. The relevant amended language provides as follows:

- (A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.
- (B) A motion in the court of appeals for an order authorizing the district court to

¹ See: Petition at ¶ 12.

consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

28 U.S.C. § 2244(b)(3).

Because it would appear that this Court cannot consider the instant petition without leave of the Court of Appeals, the petition of Jamie Michel Cokes for a writ of habeas corpus will be transferred to the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. 1631.

Entered: March 16, 2009

s/Robert C. Mitchell,
United States Magistrate Judge

ORDER

AND NOW, this 16th day of March, 2009, for the reasons set forth in the foregoing Memorandum, the above captioned petition of Jamie Michel Cokes for a writ of habeas corpus is transferred to the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. §1631,

And it is further ordered that the Clerk of Court administratively close this case.

s/ Robert C. Mitchell,
United States Magistrate Judge